England that he cannot complain of the loss of support of underground water, whether collected in a body (*Northeastern Ry. Co.* v. *Elliot*, 1 J. & H. 145), or dispersed through the soil (*Popplewell* v. *Hodkinson*, 4 Exch. 248), though the damage be directly caused by the acts of his neighbor. On the other hand, it is established that he is entitled absolutely to the support of the soil under him, even though it be so soft that a neighbor digging on the adjoining land is obliged to take extraordinary precautions to keep it from falling away. *Gilmore* v. *Driscoll*, 122 Mass. 119. The question then is whether the courts are to liken this sort of quicksand to soil or to water. It seems at first to be rather soil than water; but when it is considered that the essential distinction between earth and water for the purpose of such a case lies rather in the liquidity of the latter than in its chemical composition, it may be doubted whether the minority of the court was not right in treating everything that could be taken up by pumps as water.

A CHURCH DIVIDED AGAINST ITSELF. — In the case of *Smith* v. *Pedigo*, 44 N. E. Rep. 363, and 33 id. 777, we have the practically unanimous opinion of the Supreme Court of Indiana on the interesting question as to whether a church may change its doctrine and yet keep the property that has been given it. An unincorporated religious society was known as the "Mt. Tabor Regular Baptist Church," and held property given to it by that name, the title being vested in trustees elected by the society. The members were originally all "Regular Baptists," holding the strict Calvinistic, or "anti-means," doctrine of salvation. Religious controversies arising, a majority of the members turned to the opposite or "means" doctrine, and changed the name of the church to the "Mt. Tabor Means Baptist Association."

The society was then divided into two factions, each of which declared itself the true Mt. Tabor Baptist Church, expelled the other faction, elected trustees, and claimed the church property. One faction had the majority of the old society, but new doctrines and a new name. The court held that the minority who adhered to the old doctrines and name were entitled to the church property. The cases cited by the court, though not perfectly clear, appear to support this view; and probably the weight of authority is in its favor. Yet the question may well be considered doubtful. In Massachusetts during the early part of the century a great number of churches turned from Trinitarian to Unitarian, and kept the church property, against the vigorous protests of faithful minorities. The Indiana court seems to have misapprehended two of the cases arising out of this religious revolution, *Baker* v. *Fales*, 16 Mass. 488, and *Stebbins* v. *Jennings*, 10 Pick. 172, which they cite in support of their opinion. These cases really decide only that a minority of the "church," i. e. a smaller body of communicants contained within the whole body of pew-holders constituting the religious society or "congregation," might appoint the trustees to hold the property for the benefit of the majority of the congregation, disregarding a majority of the "church-members," who had withdrawn from the congregation. In both cases, however, the people who kept the property were the Unitarians, and the protesting "church-members" were the Orthodox Trinitarians. If any doubt had been entertained as to the right of the majority of the congregation to alter its doctrine or its name, the possession of the property

would have been bitterly contested. But no such doubt occurred to Massachusetts lawyers.

On principle it would seem desirable that a religious society in a country of religious equality should be allowed to change its faith without losing its property. It is of course true that, if property be given in trust for the support of certain doctrines, it ought not to be used by those not entertaining such doctrines, and a court of equity may be forced to undertake the difficult task of defining what doctrines the donors intended to support, and just how far the trustees may deviate therefrom. But it need not be implied that property left to a church under a denominational name was intended to be used only to forward the doctrine which the church then held. Would it not be wise to consider the property as left to the church for such religious and charitable uses as it might think best, always having regard to the donor's express declaration? This whole matter is well threshed out in *Hale* v. *Everett*, 53 N. H. 9–276, in a very long opinion against the heretical majority of the church, and a still longer and very able dissenting opinion by the late Chief Justice Doe, then Associate Justice.

RECENT CASES.

AGENCY — VICE-PRINCIPAL RULE. — *Held* (three judges dissenting), that the head of a section squad on a railway is not a vice-principal when his negligence in managing a brake causes injuries to a hand working under him. The vice-principal doctrine recognized. *Northern Pac. Ry. Co.* v. *Peterson*, 16 Sup. Ct. Rep. 843.

The decision sustains the better view of the vice-principal doctrine, that superiority of position does not constitute the relation, but that it exists only where a manager is in charge of a department acting for the principal. But the case is interesting as showing a change of view in the Supreme Court toward the vice-principal theory itself. The theory was recognized in *Ry. Co.* v. *Ross*, 112 U. S. 377; qualified in *Ry. Co.* v. *Baugh*, 149 U. S. 368; and all but repudiated in *Ry. Co.* v. *Hambly*, 154 U. S. 349, and *Ry. Co.* v. *Keegan*, 160 U. S. 259.

BILLS AND NOTES — BILL RAISED BY FILLING IN BLANKS — EFFECT OF NEGLIGENCE OF ACCEPTOR. — L. accepted a bill for £500 bearing a stamp sufficient to cover a bill for £4,000, and with blank spaces upon it which were afterwards fraudulently filled up so as to make the bill read as one for £3,500. In that condition it was negotiated to the plaintiff, who took it in good faith and for valuable consideration. *Held*, the acceptor was liable only for £500 on the bill. *Scholfield* v. *The Earl of Londesborough*, 12 *The Times* L. R. 604.

The ultimate ground of this decision in the House of Lords is that the defendant was not in fact guilty of negligence in accepting the bill in the condition in which it was when brought to him, but the Lord Chancellor proceeds vigorously to attack the doctrine of *Young* v. *Grote*, 4 Bing. 253, that one who facilitates forgery by another affects the validity of the instrument forged as against himself, which doctrine he traces to the civil law. "I am not aware," says the learned Chancellor, "of any principle known to the law which should attach such consequences to a written instrument when no such principle is applicable in any other region of jurisprudence where a man's own carelessness has given opportunity for the commission of a crime. A man, for instance, does not lose his right to his property if he has unnecessarily exposed his goods, but could recover against a *bona fide* purchaser of any article so lost, notwithstanding the fact that his conduct had to some extent assisted the thief." That the principle is not known in any other region of jurisprudence would not seem fatal to its existence as a part of the law of negotiable paper, founded as it is upon the custom of merchants. That some degree of care should be required of one who helps into existence an instrument intended to circulate from hand to hand as money seems self-evident. If one can with impunity create an instrument of such a kind that it presents an obvious opportunity to a dishonest holder of effecting a fraud, it is a serious diminution of the usefulness of negotiable paper, in so far as it tends to hamper its free circulation.